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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,426	03/09/2004	Brian Robert Prasky	POU920030068US1	1895
33558	7590	03/13/2009		
INTERNATIONAL BUSINESS MACHINES CORPORATION				
IPLAW DEPARTMENT				
2455 SOUTH ROAD - MS P386				
POUGHKEEPSIE, NY 12601				
EXAMINER				
JOHNSON, BRIAN P				
ART UNIT		PAPER NUMBER		
2183				
MAIL DATE		DELIVERY MODE		
03/13/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/796,426

Applicant(s)

PRASKY ET AL.

Examiner

BRIAN P. JOHNSON

Art Unit

2183

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 8-14, 21-24, 27, 28, 31, 40, 41 and 47-59 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1, 8-14, 21-23, 29, 31, 40, 41 and 47-59 is/are allowed.
- 6) ☒ Claim(s) 24 and 27 is/are rejected.
- 7) ☒ Claim(s) 28, 31, 40, 41, 47-50, 54-49 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-848)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 1, 8-14, 21-24, 27, 28, 31, 40, 41 and 47-59 have been examined.
2. Acknowledgement of papers filed: remarks, amendments, replacement drawings on 13 December 2008. These papers filed have been placed on record.

Allowable Subject Matter

3. Claims 1, 8-14, 21-23, 28, 31, 40, 41 and 47-59 allowed. The prior art on record does not teach the organization of the recent entry queue as a FIFO queue in combination with the remaining claimed limitations.

Claim Objections

4. Claims 40 and 41 are objected to because of the following informalities:
“...BTB.and...” should be changed to “...BTB and...”. Appropriate correction is required.

Specification

5. The disclosure is objected to because of the following informalities: the term “computer readable medium” from Claim 28 does not have adequate antecedent basis within the specification.

Appropriate correction is required.

6. The amendment filed 13 December 2008 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: Figure 4 discussion in paragraph [0034], reference to table 610 in Fig. 6 in paragraph [0034], elaboration of Figs. 4 and 5 in paragraph [0036], discussion of Fig. 6 and recent entry queue of Fig. 4 in paragraph [0037], characterization of Fig. 7 in paragraph [0038].

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 101

7. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

8. Claims 24 and 27 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The system claims 24 and 27 appear to be capable of being implemented entirely in software in light of paragraph [0039] of the specification. Therefore, it is considered non-statutory subject matter.

Conclusion

The following is text cited from 37 CFR 1.111(c): In amending in reply to a rejection of claims in an application or patent under reexamination, the applicant or patent owner

must clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. The applicant or patent owner must also show how the amendments avoid such references or objections.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRIAN P. JOHNSON whose telephone number is (571)272-2678. The examiner can normally be reached on 8-4:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eddie Chan can be reached on (571) 272-4162. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Eddie P Chan/
Supervisory Patent Examiner, Art Unit 2183

/Brian Johnson/ Patent Examiner, Art Unit 2183